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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEVEN ROY LIPSCOMB, JOHN MICHAEL CONTI,  
and JAMES JOSEPH CUOMO

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Appeal 2009-004292  
Application 10/617,477  
Technology Center 3700

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Decided: October 2, 2009

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Before TONI R. SCHEINER, DEMETRA J. MILLS, and  
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a poker table. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

*Statement of the Case*

*Background*

“Various poker game tournaments are known to be televised. Because of the various camera angles required and the effects of shadows, improvements have been made to optimize televising of such game tournaments” (Spec. 1 ¶ 0002).

*The Claims*

Claims 7, 22, and 31-40 are on appeal.<sup>1</sup> We will focus on claims 7, 31, and 33, which are representative and read as follows:

7. A poker table comprising:  
a tabletop defining an opaque, planar playing surface having a plurality of player stations and a dealer station;  
one or more supports for supporting the tabletop in a horizontal position and at a predetermined height;  
a translucent, planar light window, coplanar with the plane of the playing surface;  
a light source configured to project light continuously upwardly through the light window; and  
an arm rest extending substantially around the outer periphery of the light window.

31. A poker table comprising:  
a tabletop defining an opaque, planar playing surface having a plurality of player stations and a dealer station;  
one or more supports for supporting the tabletop in a horizontal position and at a predetermined height;  
an elongated light window extending around a substantial portion of the periphery of the playing surface and past the plurality of player stations; and

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<sup>1</sup> Claims 9 and 10 stand allowed.

a light source configured to project light continuously through the light window to the space above the playing surface.

33. The poker table [as recited in claim 31, wherein the light window is planar and coplanar with the playing surface] further including an arm rest extending around the outer periphery of the light window.

*The prior art*

The Examiner relies on the following prior art reference to show unpatentability:

Flannery US 2001/0030393 A1 Oct. 18, 2001

*The issue*

The Examiner rejected claims 7 and 31-40 under 35 U.S.C. § 103(a) as being obvious over Flannery (Ans. 3-4).

The Examiner finds that “Flannery teaches a table, an opaque tabletop, a dealer, a plurality of player positions, a translucent planar window with a light source” (Ans. 3). The Examiner finds it obvious to the skilled artisan “to place the light source anywhere desired or expedient on the table. Such would be considered a design issue and would present little or no difficulty to one of ordinary skill” (Ans. 3).

Appellants contend that “[i]t would not have been obvious to have modified Flannery's casino game so that the arm rest extends substantially around the light window's outer periphery, because that would defeat the entire purpose of the betting spaces 22” (App. Br. 5). Appellants contend that “[t]he betting spaces need to be arranged in the center of the playing

surface 14, away from the arm rest, so that the betting spaces can be reached by the croupier and players” (App. Br. 5).

Appellants also contend that “[i]t would not have been obvious to have modified Flannery's casino game to provide this feature of continuous illumination, because that would defeat the entire purpose of the betting spaces 22” (App. Br. 6).

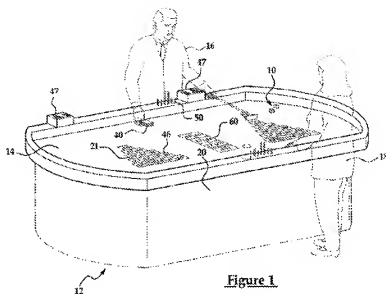
In view of these conflicting positions, we frame the obviousness issue before us as follows:

Have Appellants demonstrated that the Examiner erred in finding that Flannery renders the claims obvious?

*Findings of Fact (FF)*

1. Flannery teaches “a casino table 12 having a felt playing surface 14 as shown in FIGS. 1 and 2. A croupier 16 is positioned on one side of the table 12 and one player 18 or more stand around the remaining sides of the table 12” (Flannery 1 ¶ 0019).

2. Figure 1 of Flannery is reproduced below:



“FIG. 1 is a perspective view of a betting table” (Flannery 1 ¶ 0011).

3. Flannery teaches, in Figure 1, that the table has supports which hold the tabletop in a horizontal position at a predetermined height (*see* Flannery, Fig. 1; FF 2).

4. Flannery teaches that in “the preferred embodiment, each betting space 22 of the betting area 20 is formed on a sheet of translucent material” (Flannery 2 ¶ 0023).

5. Flannery teaches that each betting space “has a light beneath the playing surface to separately illuminate each betting space. A panel of switches 47 is located near the croupier 16” (Flannery 2 ¶ 0023).

6. Flannery teaches that “[a]fter the house side combination is selected, a switch is activated to illuminate the betting space containing the house side combination as shown at 46 or to occlude the house side combination in the event all of the betting spaces are illuminated as shown in FIG. 3” (Flannery 2 ¶ 0023).

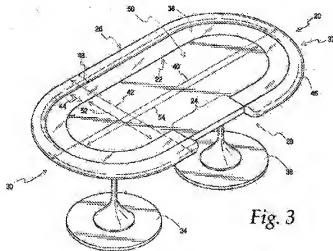
7. Flannery teaches that “the shape and arrangement of the betting areas 22 can be altered to change the type of bets made” (Flannery 2 ¶ 0028).

8. Flannery teaches that “[a]s shown in FIG. 5, betting spaces 22 can be of varying shapes and arranged in various manners such as a pyramid 68” (Flannery 2 ¶ 0028).

9. The Specification teaches that “[a]n optional arm rest 46 may be disposed around the playing area 22 of the game table 20” (Spec. 4 ¶ 0018).

10. The Specification teaches that “[t]he arm rest 46 may be padded and formed to have a width 48 (FIG. 3), for example, 4 inches” (Spec. 4 ¶ 0018).

11. Figure 3 of the Specification is reproduced below:



“FIG. 3 is a perspective view of the game table” (Spec. 2 ¶ 0008).

12. Flannery’s figure 1 discloses a raised surface which is disposed around the outer periphery of the playing area and which is structurally

identical to the raised arm rest disclosed in Figure 3 of the Specification (*see* FF 1, FF 7).

*Principles of Law*

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The Supreme Court has recently emphasized that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. “If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 417.

Moreover, an “[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982). As noted by the Court in *KSR*, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” 550 U.S. at 421.

“[T]he PTO gives a disputed claim term its broadest reasonable interpretation during patent prosecution.” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). The court recognizes the fairness of reading claims broadly



“before a patent is granted [since] the claims are readily amended as part of the examination process.” *Burlington Indus., Inc. v. Quigg*, 822 F.2d 1581, 1583 (Fed. Cir. 1987). “Thus, a patent applicant has the opportunity and responsibility to remove any ambiguity in claim term meaning by amending the application.” *Bigio*, 381 F.3d at 1324. Applying the broadest reasonable interpretation to claims also “serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.” *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

#### *Analysis*

##### *Claim 7*

We begin by interpreting the claims. Claim 7 requires “a translucent, planar light window” and an “an arm rest extending substantially around the outer periphery of the light window” (Claim 7). The use of the preposition “a” prior to “translucent, planar light window” indicates that the claim simply requires the presence of one or more light windows. The only specific requirements regarding the location of the windows on the table is that the windows are “coplanar with the plane of the playing surface” (Claim 7). There are no requirements regarding the size, shape, or horizontal location of the window in claim 7.

Claim 7 requires an arm rest which extends “substantially around the outer periphery of the light window.” With this language, the claim encompasses any arm rest which partially extends around the light window. There is no requirement regarding the distance of the arm rest from the window in claim 7.

Having now interpreted claim 7, we address the prior art of Flannery. Flannery teaches a supported tabletop with an opaque, planar playing surface that has stations for players and a dealer, where the tabletop has coplanar windows through which a light source is configured to project light (FF 1-6). Flannery also teaches a raised surface around the table which is structurally identical to the arm rest disclosed by Appellants and which extends substantially around the entire outer periphery of the light window (FF 9-12).

We are not persuaded by Appellants' argument that in Flannery "[t]hese betting spaces are arranged in the *center* of the playing surface 14, and this contrasts with the light window of independent claim 7, which is arranged so that the arm rest extends substantially around the light window's outer periphery" (App. Br. 5). While Appellants correctly characterize Flannery's table, claim 7 includes no limitation regarding the location of the light window on the table other than the light window is "coplanar with the plane of the playing surface" (*see* Claim 7). We decline to read a limitation that the light window is not in the "center" of the table into the claims. "[L]imitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

The only specific requirement in claim 7 for the relationship of the arm rest and light window is that the arm rest extend "substantially around the outer periphery of the light window" (*see* Claim 7). In the table of Flannery, the raised rim is shown in figure 1 to extend around the entire table, necessarily extending around the entire periphery of the light window

(FF 1, 2, 5). This raised rim is reasonably interpreted as satisfying the arm rest limitation, including the requirement to extend around the “outer periphery of the light window” (FF 9-12).

We are also not persuaded by Appellants’ argument that “[i]t would not have been obvious to have modified Flannery’s casino game to provide this feature of continuous illumination, because that would defeat the entire purpose of the betting spaces 22” (App. Br. 6). There is no reasonable dispute that Flannery’s table comprises a light source which projects light through the light window (FF 4-6).

Appellants provide no reason or evidence which suggests that the lights of Flannery cannot be left on indefinitely (or at least until the light bulbs burn out), but simply rely upon the intended use of Flannery relative to the intended use of their invention. We therefore agree with the Examiner that the word “continuously” in claim 7 “merely teaches that the light stays on all the time and is a function of the light source and its’ intended use” (Ans. 4). *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (“It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable.”)

We also are not persuaded by Appellants’ argument that “the Examiner has failed to point out *why* persons skilled in the art would have chosen to modify Flannery’s game table to include a built-in lighting system of the kind being claimed” (App. Br. 6). We note that while Flannery does not clearly indicate whether the lights are integrated into the table, Flannery does clearly teach that the light switches are integrated into the table (FF 5). Given Flannery’s express teaching to use a light source under the table to

illuminate a light window and the teaching to integrate the light switches into the table, we find that it would have been obvious to the creative person of ordinary skill to also integrate the light source into the table. *See KSR*, 550 U.S. at 417 (“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.”)

*Claim 31*

Claim 31 differs from claim 7 in one respect, in that claim 31 requires “an elongated light window extending around a substantial portion of the periphery of the playing surface and past the plurality of player stations” (Claim 31). Appellants argue that “[i]t would not have been obvious to have modified Flannery’s casino game so that the light window extends around a substantial portion of the periphery of the playing surface and past the plurality of player stations, because that would defeat the entire purpose of the betting spaces 22” (App. Br. 7).

We are not persuaded by Appellants’ argument for two reasons. First, claim 31 does not impose any specific requirements on how close to the periphery the light windows must extend nor does claim 31 include how large a portion of the periphery over which the light windows must extend. Consequently, applying the broadest reasonable interpretation of claim 31, we find that the light windows of Flannery are reasonably found to extend around a substantial portion of the periphery of the playing surface (*see* FF

2). That is, the light windows of Flannery extend towards the periphery and make up a “substantial”<sup>2</sup> portion of the periphery.

Second, we agree with the Examiner that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to place the light source anywhere desired or expedient on the table” (Ans.

3). That is, the ordinary artisan would have been able to place the betting areas of Flannery in any location on the table that is desired (FF 1-3). As Flannery expressly notes that “the shape and arrangement of the betting areas 22 can be altered to change the type of bets made” (Flannery 2 ¶ 0028; FF 7). Flannery also teaches that “[a]s shown in FIG. 5, betting spaces 22 can be of varying shapes and arranged in various manners such as a pyramid 68” (Flannery 2 ¶ 0028; FF 8). We agree with the Examiner that it would have been obvious to the creative person of ordinary skill to modify the table with “an elongated light window extending around a substantial portion of the periphery of the playing surface.” *See KSR*, 550 U.S. at 417 (“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.”)

*Claim 33*

As we discussed above regarding claim 7, we are not persuaded by Appellants’ argument that “it would not have been obvious to have modified Flannery’s casino game so that the arm rest extends around the light window’s outer periphery, because that would defeat the entire purpose of

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<sup>2</sup> *See* <http://dictionary.reference.com/browse/substantial> (“Substantial” is defined as “of ample or considerable amount, quantity, size, etc.”)

the betting spaces 22” (App. Br. 10). In the table of Flannery, the raised rim is shown in figure 1 to extend around the entire table, necessarily extending around the entire periphery of the light window (FF 1, 2, 5). This raised rim is reasonably interpreted as satisfying the arm rest limitation, including the requirement to extend around the “outer periphery of the light window” (FF 9-12).

*Conclusion of Law*

Appellants have not demonstrated that the Examiner erred in finding that Flannery renders the claims obvious.

**SUMMARY**

In summary, we affirm the rejection of claims 7, 31, and 33 under 35 U.S.C. § 103(a) as being obvious over Flannery. Pursuant to 37 C.F.R. § 41.37(c)(1)(vii)(2006), we also affirm the rejection of claims 22, 32 and 34-40, as these claims were not argued separately.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

**AFFIRMED**

cde

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